

REMARKS

Claims 1-14 are pending in the present application. None of the claims were amended in this response.

Claims 1-2, 5-10 and 12-14 were rejected under 35 U.S.C. §102(e) as being anticipated by Brumm et al. (US Pub 2002/0054590). Claim 11 was rejected under 35 U.S.C. §103(a) as being unpatentable over Brumm et al. (US Pub 2002/0054590). Claims 3 and 4 were rejected under 35 U.S.C. §103(a) as being unpatentable over Brumm et al. (US Pub 2002/0054590) in view of Dunn et al. (US Patent 6,324,280). Applicants traverse the rejections. Favorable reconsideration is respectfully requested.

Applicants note that the US filing date of Brumm is April 6, 2001. The present application claims priority to German Application 10038688.1, filed on August 8, 2000. Accordingly, Brumm may not be cited as prior art under 35 U.S.C. §102(e). According to MPEP 2136.03:


35 U.S.C. § 102(e) is explicitly limited to certain references "filed in the United States before the invention thereof by the applicant" (emphasis added). Foreign applications' filing dates that are claimed (via 35 U.S.C. 119(a) - (d), (f) or 365(a)) in applications, which have been published as U.S. or WIPO application publications or patented in the U.S., may not be used as 35 U.S.C. 102(e) dates for prior art purposes. This includes international filing dates claimed as foreign priority dates under 35 U.S.C. 365(a). Therefore, the foreign priority date of the reference under 35 U.S.C. 119(a)-(d) (f), and 365(a) cannot be used to antedate the application filing date. In contrast, applicant may be able to overcome the 35 U.S.C. 102(e) rejection by proving he or she is entitled to his or her own 35 U.S.C. 119 priority date which is earlier than the reference's U.S. filing date. *In re Hilmer*, 359 F.2d 859, 149 USPQ 480 (CCPA 1966).

As such, Applicants submit the rejection under 35 U.S.C. §102 and §103 are improper and should be withdrawn. In light of the above, Applicant respectfully submit that claims 1-14 are allowable. Applicants respectfully submit that the patent application is in condition for allowance and request a Notice of Allowance be issued. The Commissioner is authorized to

charge and credit Deposit Account No. 02-1818 for any additional fees associated with the submission of this Response. Please reference docket number 112740-268.

Respectfully submitted,

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